

1 Rule 1.7. Conflict of interest: ~~general rule~~ Current Clients.

2 (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the
3 representation involves a concurrent conflict of interest. A concurrent conflict of interest
4 exists if:

5 (a)(1) The representation of one client will be directly adverse to another client; or

6 (a)(2) There is a significant risk that the representation of one or more clients will be
7 materially limited by the lawyer's responsibilities to another client, a former client or a
8 third person or by a personal interest of the lawyer.

9 (b) Notwithstanding the existence of a concurrent conflict of interest under
10 paragraph (a), a lawyer may represent a client if:

11 (b)(1) the lawyer reasonably believes that the lawyer will be able to provide
12 competent and diligent representation to each affected client;

13 (b)(2) the representation is not prohibited by law;

14 (b)(3) the representation does not involve the assertion of a claim by one client
15 against another client represented by the lawyer in the same litigation or other
16 proceeding before a tribunal; and

17 (b)(4) each affected client gives informed consent, confirmed in writing.

18 Comment

19 General Principles

20 [1] Loyalty and independent judgment are essential elements in the lawyer's
21 relationship to a client. Concurrent conflicts of interest can arise from the lawyer's
22 responsibilities to another client, a former client or a third person or from the lawyer's
23 own interests. For specific rules regarding certain concurrent conflicts of interest, see
24 Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest
25 involving prospective clients, see Rule 1.18. For definitions of "informed consent" and
26 "confirmed in writing," see Rules 1.0(e) and (b).

27 [2] Resolution of a conflict of interest problem under this Rule requires the lawyer
28 to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest
29 exists; 3) decide whether the representation may be undertaken despite the existence
30 of a conflict, i.e., whether the conflict is consentable; and, 4) if so, consult with the
31 clients affected under paragraph (a)(1) and obtain their informed consent, confirmed in

32 writing. The clients affected under paragraph (a)(1) include both of the clients referred
33 to in paragraph (a)(1) and the one or more clients whose representation might be
34 materially limited under paragraph (a)(2).

35 [3] A conflict of interest may exist before representation is undertaken, in which
36 event the representation must be declined, unless the lawyer obtains the informed
37 consent of each client under the conditions of paragraph (b). To determine whether a
38 conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for
39 the size and type of firm and practice, to determine in both litigation and nonlitigation
40 matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance
41 caused by a failure to institute such procedures will not excuse a lawyer's violation of
42 this Rule. As to whether a client-lawyer relationship exists or, having once been
43 established, is continuing, see Comment to Rule 1.3 and Scope.

44 [4] If a conflict arises after representation has been undertaken, the lawyer ordinarily
45 must withdraw from the representation, unless the lawyer has obtained the informed
46 consent of the client under the conditions of paragraph (b). See Rule 1.16. Where
47 more than one client is involved, whether the lawyer may continue to represent any of
48 the clients is determined both by the lawyer's ability to comply with duties owed to the
49 former client and by the lawyer's ability to represent adequately the remaining client or
50 clients, given the lawyer's duties to the former client. See Rule 1.9. See also
51 Comments [5] and [29].

52 [4a] To eliminate confusion, former Rule 2.2 "Intermediary" has been deleted
53 entirely. The term "intermediation" is changed in Rule 1.7 to "common representation".
54 Comment [4] sets out the analysis that a lawyer should make in order to determine
55 when common representation is improper. The comments to Rule 1.7 specifically
56 instruct lawyers on what informed consent means in the situations.

57 [5] Unforeseeable developments, such as changes in corporate and other
58 organizational affiliations or the addition or realignment of parties in litigation, might
59 create conflicts in the midst of a representation, as when a company sued by the lawyer
60 on behalf of one client is bought by another client represented by the lawyer in an
61 unrelated matter. Depending on the circumstances, the lawyer may have the option to
62 withdraw from one of the representations in order to avoid the conflict. The lawyer must

seek court approval where necessary and take steps to minimize harm to the clients.
See Rule 1.16. The lawyer must continue to protect the confidences of the client from
whose representation the lawyer has withdrawn. See Rule 1.9(c).

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current ~~As a general proposition, loyalty to a client~~ prohibits
undertaking representation directly adverse to that client without ~~the client's consent~~.
~~Paragraph (1) expresses that general rule. Thus, a lawyer ordinarily may not act as~~
~~advocate that client's informed consent. Thus, absent consent, a lawyer may not act as~~
an advocate in one matter against a person the lawyer represents in some other matter,
even ~~if it is wholly unrelated~~ when the matters are wholly unrelated. The client as to
whom the representation is directly adverse is likely to feel betrayed, and the resulting
damage to the client-lawyer relationship is likely to impair the lawyer's ability to
represent the client effectively. In addition, the client on whose behalf the adverse
representation is undertaken reasonably may fear that the lawyer will pursue that
client's case less effectively out of deference to the other client, i.e., that the
representation may be materially limited by the lawyer's interest in retaining the current
client. Similarly, a directly adverse conflict may arise when a lawyer is required to
cross-examine a client who appears as a witness in a lawsuit involving another client,
as when the testimony will be damaging to the client who is represented in the lawsuit.
On the other hand, simultaneous representation in unrelated matters of clients whose
interests are only generally economically adverse, such as representation of competing
economic enterprises, ~~does in unrelated litigation, does not ordinarily constitute a~~
conflict of interest and thus may not require consent of the respective clients.

~~Paragraph (a) applies only when the representation of one client would be directly
adverse to the other.~~

[7] Directly adverse conflicts can also arise in transactional matters. For example, if
a lawyer is asked to represent the seller of a business in negotiations with a buyer
represented by the lawyer, not in the same transaction but in another, unrelated matter,
the lawyer could not undertake the representation without the informed consent of each
client.

Loyalty to a client is also impaired when a lawyer cannot

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client ~~because~~ will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. ~~Paragraph (b) addresses such situations. A possible conflict~~ The mere possibility of subsequent harm does not itself ~~preclude the representation~~ require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. ~~Consideration should be given to whether the client wishes to accommodate the other interest involved.~~

Consultation and Consent

~~A client may consent to representation notwithstanding a conflict. However, as indicated in paragraph (a)(1) with respect to representation directly adverse to a client and paragraph (b)(1) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than one client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is~~

Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

[11] When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

[12] A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 1.8(j).

Interest of Person Paying for a Lawyer's Service

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant

156 risk that the lawyer's representation of the client will be materially limited by the lawyer's
157 own interest in accommodating the person paying the lawyer's fee or by the lawyer's
158 responsibilities to a payer who is also a co-client, then the lawyer must comply with the
159 requirements of paragraph (b) before accepting the representation, including
160 determining whether the conflict is consentable and, if so, that the client has adequate
161 information about the material risks of the representation.

162 Prohibited Representations

163 [14] Ordinarily, clients may consent to representation notwithstanding a conflict.
164 However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning
165 that the lawyer involved cannot properly ask for such agreement or provide
166 representation on the basis of the client's consent. When the lawyer is representing
167 more than one client, the question of consentability must be resolved as to each client.

168 [15] Consentability is typically determined by considering whether the interests of
169 the clients will be adequately protected if the clients are permitted to give their informed
170 consent to representation burdened by a conflict of interest. Thus, under paragraph
171 (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably
172 conclude that the lawyer will be able to provide competent and diligent representation.
173 See Rule 1.1 (competence) and Rule 1.3 (diligence).

174 [16] Paragraph (b)(2) describes conflicts that are nonconsentable because the
175 representation is prohibited by applicable law. For example, in some states substantive
176 law provides that the same lawyer may not represent more than one defendant in a
177 capital case, even with the consent of the clients, and under federal criminal statutes
178 certain representations by a former government lawyer are prohibited, despite the
179 informed consent of the former client. In addition, decisional law in some states limits
180 the ability of a governmental client, such as a municipality, to consent to a conflict of
181 interest.

182 [17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the
183 institutional interest in vigorous development of each client's position when the clients
184 are aligned directly against each other in the same litigation or other proceeding before
185 a tribunal. Whether clients are aligned directly against each other within the meaning of
186 this paragraph requires examination of the context of the proceeding. Although this

paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(m)), such representation may be precluded by paragraph (b)(1).

Informed Consent

[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(e) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Lawyer's Interests

~~The lawyer's own interests should not be permitted to have adverse effect on representation of a client. For example, a lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and at a reasonable fee. See Rules 1.1 and 1.5. If the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.~~

Consent Confirmed in Writing

[20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0(b). See also Rule 1.0(n) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict

[22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client

249 agrees to consent to a particular type of conflict with which the client is already familiar,
250 then the consent ordinarily will be effective with regard to that type of conflict. If the
251 consent is general and open-ended, then the consent ordinarily will be ineffective,
252 because it is not reasonably likely that the client will have understood the material risks
253 involved. On the other hand, if the client is an experienced user of the legal services
254 involved and is reasonably informed regarding the risk that a conflict may arise, such
255 consent is more likely to be effective, particularly if, e.g., the client is independently
256 represented by other counsel in giving consent and the consent is limited to future
257 conflicts unrelated to the subject of the representation. In any case, advance consent
258 cannot be effective if the circumstances that materialize in the future are such as would
259 make the conflict nonconsentable under paragraph (b).

260 Conflicts in Litigation

261 [23] Paragraph (a)(b)(3) prohibits representation of opposing parties in~~litigation.~~
262 ~~Simultaneous~~ the same litigation, regardless of the clients' consent. On the other hand,
263 simultaneous representation of parties whose interests in litigation may conflict, such as
264 ~~co-plaintiffs or co-defendants~~ coplaintiffs or codefendants, is governed by paragraph (b).
265 ~~An impermissible (a)(2).~~ A conflict may exist by reason of substantial discrepancy in the
266 parties' testimony, incompatibility in positions in relation to an opposing party or the fact
267 that there are substantially different possibilities of settlement of the claims or liabilities
268 in question. Such conflicts can arise in criminal cases as well as civil. The potential for
269 conflict of interest in representing multiple defendants in a criminal case is so grave that
270 ordinarily a lawyer should decline to represent more than one ~~co-defendant~~ codefendant.
271 On the other hand, common representation of persons having similar interests in civil
272 litigation is proper if ~~the risk of adverse affect is minimal and~~ the requirements of
273 paragraph (b) are met. ~~Compare Rule 2.2, involving intermediation between clients.~~

274 ~~Ordinarily, a lawyer may not act as advocate against a client the lawyer represents~~
275 ~~in some other matter, even if the other matter is wholly unrelated. However, there are~~
276 ~~circumstances in which a lawyer may act as an advocate against a client. For example,~~
277 ~~a lawyer representing an enterprise with diverse operations may accept employment as~~
278 ~~an advocate against the enterprise~~

[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients consent upon consultation. By the same token, government lawyers in some circumstances may represent government employees in proceedings in which a government agency is the opposing party. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

A lawyer may represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases pending in different trial courts, but it may be improper to do so in cases pending at the same time in an appellate court.

Interest of Person Paying for Lawyer's Service

[25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this

Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

~~A lawyer may be paid from a source other than the client if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty to the client. See Rule 1.8(f). For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement and the insurer is required to provide separate counsel for the insured, the arrangement should assure the separate counsel's professional independence. So also, when a corporation and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees, if the clients consent after consultation and the arrangement ensures the lawyer's professional independence.~~

Other Conflict Situations

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation ~~sometimes may be difficult to assess.~~ For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for ~~adverse effect—material limitation~~ include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that ~~actual—conflict~~ disagreements will arise and the likely prejudice to the client from the conflict ~~if it does arise~~. The question is often one of proximity and degree. See Comment [8].

~~For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them. Conflict questions may also [27] For example, conflict questions may~~ arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife,

and, depending upon the circumstances, a conflict of interest may ~~arise~~ be present. In estate administration, the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view, the client is the estate or trust, including its beneficiaries. ~~The~~ In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed

antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the client should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the

common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(c).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

Organizational Clients

[34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that-

Conflict Charged by an Opposing Party

~~Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there~~

~~is reason to infer that the lawyer has neglected the responsibility. In a criminal case,~~
~~inquiry by the court is generally required when a lawyer represents multiple defendants.~~
~~Where the conflict is such as clearly to call in question the fair or efficient administration~~
~~of justice, opposing counsel may properly raise the question. Such an objection should~~
~~be viewed with caution, however, for it can be misused as a technique of harassment.~~
See Scope. considerations might require the lawyer's recusal as a director or might
require the lawyer and the lawyer's firm to decline representation of the corporation in a
matter.